

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NAVIGATOR CAPITAL PARTNERS, L.P., on behalf of  
itself and all others similarly situated,

Plaintiff,

-against-

BEAR STEARNS ASSET MANAGEMENT INC., *et al.*,

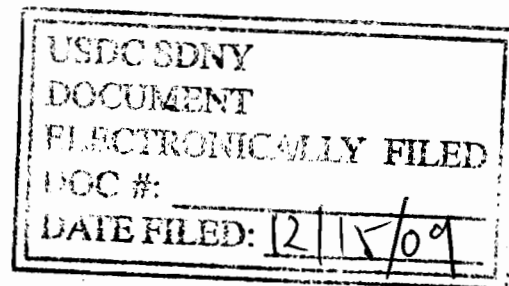
Defendants,

-and-

BEAR STEARNS HIGH-GRADE STRUCTURED  
CREDIT STRATEGIES, L.P.,

Nominal Defendant.

No. 07 Civ. 07783 (AKH)



FIC, L.P., individually, and on behalf of all others similarly  
situated,

Plaintiff,

-against-

BEAR STEARNS ASSET MANAGEMENT INC., *et al.*,

Defendants,

-and-

BEAR STEARNS HIGH-GRADE STRUCTURED  
CREDIT STRATEGIES ENHANCED LEVERAGE, L.P.,

Nominal Defendant.

No. 07 Civ. 11633 (AKH)

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GEOFFREY VARGA and WILLIAM CLEGHORN, as  
Joint Official Liquidators of Bear Stearns High-Grade  
Structured Credit Strategies (Overseas) Ltd. and Bear  
Stearns High-Grade Structured Credit Strategies Enhanced  
Leverage (Overseas) Ltd.,

Plaintiffs,

-against-

THE BEAR STEARNS COMPANIES, INC., *et al.*,

Defendants.

No. 08 Civ. 03397 (AKH)

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STILLWATER MARKET NEUTRAL FUND II LP,

Plaintiff,

-against-

BEAR STEARNS ASSET MANAGEMENT INC., *et al.*,

Defendants,

- and -

BEAR STEARNS HIGH-GRADE STRUCTURED  
CREDIT STRATEGIES FUND, LP,

Nominal Defendant.

No. 09 Civ. 4223 (AKH)

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GEOFFREY VARGA and WILLIAM CLEGHORN, as  
Joint Official Liquidators of Bear Stearns High-Grade  
Structured Credit Strategies (Overseas) Ltd. and Bear  
Stearns High-Grade Structured Credit Strategies Enhanced  
Leverage (Overseas) Ltd.,

Plaintiffs,

-against-

DELOITTE & TOUCHE LLP, *et al.*,

Defendants.

No. 09 Civ. 04936 (AKH)

**STIPULATION AMENDING FIRST JOINT DISCOVERY PLAN**

**WHEREAS:**

A. On February 24, 2009, the parties in the first three of the above-captioned actions (the Navigator, FIC and Varga 2008 Actions, respectively) appeared before this Court for oral argument (the "February Argument") on the motions of Defendants to dismiss each of the amended complaints in those actions. During the February Argument, this Court directed the parties in the Navigator and FIC Actions to begin producing documents on a rolling basis within twenty (20) days after a ruling on the motions to dismiss, and requested that plaintiffs in the Varga 2008 Action address certain issues in an amended complaint.

B. During the February Argument, the Court also directed the parties to submit a joint discovery plan that preliminarily: (i) sets the dates by which the parties will exchange documents and may serve initial interrogatories; (ii) sets dates for parties to identify individuals to be deposed and a time period for conducting depositions; and (iii) identifies a period midway through the depositions during which the parties will appear before the Court for a case management conference;

C. On March 18, 2009, the Court entered a Stipulation and Protective Order; that Order was amended by an Amended Stipulation and Protective Order, so ordered by the Court on May 6, 2009; and the parties are currently amending that Order again to include the Stillwater and Varga 2009 Actions, defined below ("Second Amended Stipulation and Protective Order"), and entering into a separate Agreement Governing Access to Certain Electronic Workpapers of Deloitte & Touche LLP (collectively, the "Amended Protective Orders").

D. Whereas the parties agree that this agreement does not take effect until the Amended Protective Orders are entered by the Court;

E. On March 26, 2009, plaintiffs in the Varga 2008 Action amended their complaint, among other things, to discontinue without prejudice their claims against certain defendants, including, among others, Walkers Funds Services Limited, Scott Lennon and Michelle Wilson-Clarke (together, the "Walkers Defendants") and Deloitte & Touche LLP ("Deloitte U.S.") and Deloitte & Touche Cayman Islands ("Deloitte Cayman"). In addition, counsel for Varga also discontinued without prejudice all derivative claims brought by, among others, Stillwater Capital Partners, L.P. ("Stillwater Capital") respecting the Bear Stearns High-Grade Structured Credit Strategies Fund, LP ("High Grade Fund (Domestic)") which were initially filed on June 30, 2008 in Varga's First Amended Complaint;

F. On March 27, 2009, Stillwater Capital, represented by new counsel, filed a Complaint in the Supreme Court of the State of New York, New York County ("Stillwater Action").

G. On April 24, 2009, Varga filed a Complaint in the Supreme Court of the State of New York, New York County against the Walkers Defendants, and Deloitte U.S. and Deloitte Cayman ("Varga 2009 Action").

H. On May 5, 2009, the Court entered a "Stipulation and First Joint Discovery Plan" ("First Joint Discovery Plan") which had been stipulated to by all of the parties to the Navigator, FIC and Varga 2008 Actions, a copy of which is attached hereto as Exhibit A.

I. To date, a substantial amount of documents have been produced in accordance with the original First Joint Discovery plan and the parties are continuing to "meet and confer" in an attempt to resolve disputes about the sufficiency of those productions. On June 23, 2009, the parties to the First Joint Discovery Plan agreed to extend the commencement of Phase II discovery without date: (i) to give plaintiffs' counsel an opportunity to review the large number

of documents produced by defendants; (ii) to allow defendants' counsel an opportunity to review documents provided by plaintiffs and other documents that plaintiffs intended to produce; and (iii) to allow for discussions among counsel for the parties concerning Phase I production in order to avoid unnecessary requests for production of documents in Phase II that had already been produced in Phase I.

J. The Stillwater and Varga 2009 Actions were removed to this Court by Defendants, and both Varga and Stillwater filed separate Remand Motions.

K. Oral argument on the Remand Motions was heard on August 25, 2009, and the Court denied both motions. After it denied the motions, the Court indicated that all of the parties to the Stillwater<sup>1</sup> and Varga 2009 Actions should coordinate discovery with the other actions without unnecessary duplication and should fall within the First Joint Discovery Plan.

L. On November 20, 2009, defendants moved to dismiss, stay or consolidate the Stillwater Action; on November 24, 2009, Navigator also moved to dismiss, stay or consolidate the Stillwater Action. On November 20, 2009, defendants Deloitte U.S. and Deloitte Cayman moved to dismiss the Varga 2009 Action. This Stipulation Amending First Joint Discovery Plan is without prejudice to any of the pending motions.

M. The parties are entering into this Stipulation Amending First Joint Discovery Plan in order to: (i) include the Stillwater Action and the Varga 2009 Action in the First Joint Discovery Plan, without any unnecessary duplication, and without prejudice to any of the pending motions; (ii) include without unnecessary duplication Stillwater, Deloitte U.S. and Deloitte Cayman as parties to the First Joint Discovery Plan, as Stillwater, Deloitte U.S. and Deloitte Cayman are the only parties in the Stillwater and Varga 2009 Actions who are not

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<sup>1</sup> On October 6, 2009, an Amended Complaint was filed in the Stillwater Action, alleging that the relevant investments were made by Stillwater Market Neutral Fund II LP (hereinafter referred to as "Stillwater").

already signatories to the First Joint Discovery Plan; and (iii) reflect the extension of Phase II discovery necessitated by, *inter alia*, the volume of documents produced in Phase I, the addition of Stillwater, Deloitte U.S. and Deloitte Cayman and the parties' belief that additional time will allow them to conduct Phase II discovery more efficiently.

N. Discovery disputes in the captioned cases will be presented to the Court in the manner provided in Rule 2.E. of this Court's Individual Rules.

**NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by the undersigned parties, through their undersigned counsel, as follows:

**I. Document Discovery**

1. **Phase I Discovery:** Production of all documents that each party reasonably believes in good faith to be relevant to the claims and defenses in the above-captioned actions.

a. The parties in the Navigator, FIC and the Varga 2008 Actions have produced documents in those actions in accordance with Phase I. The parties will continue to “meet and confer” in an attempt to resolve disputes about the sufficiency of their respective productions.

b. Within 15 business days of the entry of this Order, each party in FIC, Navigator, and the Varga 2008 Actions shall produce to counsel for Deloitte U.S. and Deloitte Cayman: (i) a copy of all discovery that party has produced to date in these three actions in the same media in which it has previously been produced to the parties in those actions (“Previously Produced Phase I Discovery”); (ii) a copy of any cover letters accompanying those productions; (iii) copies of all correspondence generated to date by that party concerning discovery; and (iv) copies of all privilege logs provided to opposing counsel by that party. Because Navigator’s counsel is currently in possession of Previously Produced Phase I Discovery, and in accordance with the Court’s instructions to avoid unnecessary duplication, no party is obligated to provide

Stillwater's counsel with Previously Produced Phase I Discovery. Nothing in this paragraph or Order is intended to prevent (and no party objects to) Navigator's counsel or Varga's counsel from sharing Previously Produced Phase I Discovery with Stillwater's counsel or Stillwater's counsel from obtaining its own copy of Previously Produced Phase I Discovery from Navigator's counsel or Varga's counsel provided that Stillwater's counsel executes the Second Amended Stipulation and Protective Order or an amended protective order which imposes the same obligations upon all parties and is satisfactory to counsel in all of the above-captioned actions and pays reasonable costs of preparing the copy.

c. Within 15 business days of the entry of this Order, (i) Stillwater, Deloitte U.S. and Deloitte Cayman will commence production on a rolling basis of their Phase I discovery (defined above) in an electronic format negotiated in good faith by the parties to the above-captioned actions and (ii) the parties in the Stillwater and Varga 2009 Actions who produced Previously Produced Phase I Discovery will commence production on a rolling basis of additional discovery, if any, required by Phase I in connection with the Stillwater and Varga 2009 Actions. Among other things, to the extent not already produced, each party shall produce all nonprivileged documents it produced to any state or federal governmental or regulatory entity in connection with any investigations or inquiries relating to the Funds<sup>2</sup> and Defendants' activities with respect to the Funds, including but not limited to the Department of Justice (including, but not limited to any United States Attorney's Office), the United States Securities and Exchange Commission, and the Secretary of the Commonwealth of Massachusetts (the "Investigations"), that it reasonably believes in good faith to be relevant. To the extent any party

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<sup>2</sup> The Funds are the Bear Stearns High-Grade Structured Credit Strategies L.P., the Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage, L.P., the Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., the Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Master Fund, Ltd., the Bear Stearns High-Grade Structured Credit Strategies (Overseas) Ltd., and the Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage (Overseas) Ltd.



withholds nonprivileged documents that it produced during the Investigations, it shall identify those documents by category in a manner that allows the other parties to understand the basis upon which such documents are withheld. For relevant, nonprivileged documents produced in the Investigations, to the extent they exist, each party shall identify any custodian lists and any search terms used in searching for such documents. For other documents produced by all parties, the parties shall identify any custodian lists and any search terms used in searching for such documents.

d. Phase I production in the Stillwater and Varga 2009 Actions will continue on a rolling basis until such time as each party provides written notice to all opposing parties in its respective actions that it reasonably believes in good faith that it has produced all of its non-privileged documents relevant to the Stillwater and Varga 2009 Actions, which shall be no later than January 29, 2010.

e. Within thirty days (30) days of completing Phase I discovery in the Stillwater and Varga 2009 Actions, the parties shall exchange privilege logs, to the extent not already furnished, relating to documents withheld on privilege grounds in Phase I in the manner provided in Local Civil Rule 26.2.

2. **Phase II Discovery:** Discovery of those categories of documents that a party in good faith believes were not included in Phase I productions.

a. By January 15, 2010, the parties in the FIC, Navigator and Varga 2008 Actions shall serve particularized discovery requests upon each other seeking categories of documents that each reasonably believes in good faith were not included in Phase I productions and which would be relevant to any claim or defense to the claims in these actions. By February 26, 2010, the parties shall provide written responses to the discovery requests. Between March 1



and March 26, 2010, the parties shall meet in good faith to resolve any disputes and to discuss the custodians to be searched, the search terms to be used for electronic discovery, the scope of collection productions, and to discuss the dates for the commencement and conclusion of Phase II discovery. Parties in the FIC, Navigator and Varga 2008 Actions shall provide copies of their discovery requests and correspondence to the parties in the Varga 2009 and Stillwater Actions.

b. By May 7, 2010, the parties in the Varga 2009 Action shall serve particularized discovery requests upon parties to the above-captioned actions seeking categories of documents that each reasonably believes in good faith were not included in Phase I productions and which would be relevant to any claim or defense to the claims in these actions. By June 7, 2010, the parties shall provide written responses to the discovery requests. Between June 14, 2010, and June 21, 2010, the parties shall meet in good faith to resolve any disputes and to discuss the custodians to be searched, the search terms to be used for electronic discovery, the scope of collection productions, and the dates for the commencement and conclusion of Phase II discovery.

c. By May 7, 2010, Stillwater, Deloitte U.S. and Deloitte Cayman shall serve particularized discovery requests upon parties to the above-captioned actions seeking categories of documents that each reasonably believes in good faith were not included in Phase I productions and which would be relevant to any claim or defense to the claims in these actions. By June 7, 2010, these parties shall provide written responses to the discovery requests. Between June 14, 2010, and June 21, 2010, these parties shall meet in good faith to resolve any disputes and to discuss the custodians to be searched, the search terms to be used for electronic discovery, the scope of collection productions, and to discuss the dates for the commencement and conclusion of Phase II discovery. Stillwater will not serve additional requests on the Bear

Stearns or Walkers Defendants in Phase II. Stillwater may coordinate with Navigator in connection with Navigator's Phase II discovery requests.

### **3. Initial Disclosures**

a. On or before December 15, 2009, the parties in the Varga 2009 Action, and Stillwater and Deloitte U.S. in the Stillwater Action, shall provide initial disclosures in those respective actions consistent with Fed. R. Civ. Proc. 26(a)(1)(A)(iii) and (iv). The parties in the FIC, Navigator and Varga 2008 Actions have already provided initial disclosures required by Fed. R. Civ. Proc. 26(a)(1)(A)(iii) and (iv). Because the Bear Stearns Entities, the Bear Stearns Director Defendants, Messrs. Cioffi, Tannin and McGarrigal and the Walkers Defendants have provided initial disclosures in the Navigator action, they are not required to provide additional disclosures in the Stillwater Action; instead, the initial disclosures provided by those parties in the Navigator action are deemed to apply to the Stillwater action. Navigator's counsel shall provide copies of the initial disclosures in the Navigator Action to Stillwater after Stillwater executes the Second Amended Stipulation and Protective Order or an amended protective order which imposes the same obligations upon all parties and is satisfactory to counsel in all of the above-captioned actions and pays reasonable costs of preparing the copy. During Phase I discovery, the parties shall not provide initial disclosures required under Fed. R. Civ. Proc. 26(a)(1)(A)(i) and (ii).

b. At or after the conclusion of Phase I, if any party believes that it would benefit from a response to Fed. R. Civ. Proc. 26(a)(1)(A)(i) and (ii), it shall meet and confer in good faith with the party from whom it seeks such disclosures and determine the scope and time frame for such disclosures.

**4. Initial Interrogatories and Depositions**

- a. At any time during Phase II, each party may serve its first set of interrogatories on opposing parties in its respective action(s), consistent with Local Civil Rule 33.3.
- b. All parties must serve their responses and objections to each set of initial interrogatories within forty-five (45) days after being served with that set of interrogatories.
- c. The parties shall meet and confer with respect to any other changes in the general limitations on the number and scope of interrogatories.
- d. Depositions and expert discovery will commence after completion of Phase II discovery in all coordinated actions. The parties will meet and confer in good faith to propose a schedule for depositions and expert discovery, as well as to discuss any changes to the general limitations on the number and/or length of depositions.

5. **Additional Discovery:** To the extent any party believes it needs to serve additional discovery requests after the dates provided herein for initial requests, based on discovery that has been taken during the period for initial requests, it may do so at any time during the course of fact discovery provided that any additional requests not be duplicative of previous requests or seek previously produced information, and the parties should work in good faith to provide a mutually agreeable schedule for any written response, meet and confer and/or production of such discovery materials.

6. **The Stillwater Action:** Nothing in this Section I ("Document Discovery") shall require the Bear Stearns Entities, the Bear Stearns Director Defendants, Messrs. Cioffi, Tannin, and McGarrigal and/or the Walkers Defendants to engage in any discovery with or provide any correspondence or privilege logs to Stillwater. To the extent Stillwater seeks any further

discovery from these defendants after the date of this Order, it may coordinate with Navigator and include such requests in Navigator's requests on the schedule set forth above for Navigator to obtain such discovery, which will then be produced (if not objectionable) by these defendants only to Navigator. To the extent Stillwater at any time seeks to obtain copies of discovery produced, correspondence or privilege logs, Stillwater may coordinate with Navigator or Varga to obtain any such discovery, correspondence or privilege logs.<sup>3</sup>

## II. Case Management Conference

a. The December 15, 2009 case management conference shall be adjourned until May <sup>27</sup>~~15~~, 2010, at <sup>10<sup>00</sup>a.</sup>~~4:00 p.m.~~


b. One week prior to the conference, the parties shall submit a Second Joint Discovery Plan which shall propose a schedule for completion of remaining Phase II discovery, deposition discovery, as well as expert discovery, in all of the actions.

c. Nothing in this amended First Joint Discovery Plan shall prejudice any party's right in any of the actions to object to or otherwise seek to limit any discovery request or notice on any ground, or submit a request to the Court seeking to limit, expand or extend any of the limitations and dates herein.

Dated: New York, New York  
December 11, 2009

<sup>3</sup> Stillwater reserves its rights to seek modification of all such arrangements in connection with the pending motions to stay, dismiss or consolidate the Stillwater Action.

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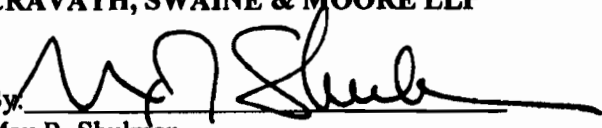
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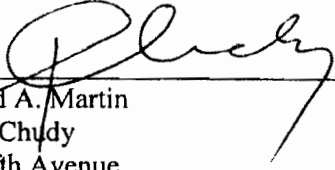
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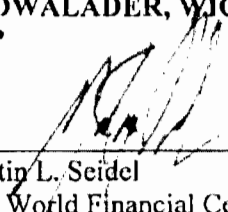
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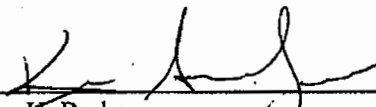
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